

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA ANN HARDIMAN and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 02-2373; Submitted on the Record;
Issued June 27, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective November 5, 2000.

The Office accepted appellant's claim for contusion of the right knee, aggravation of degenerative joint disease of both knees, internal derangement of the right knee and fracture of the low end of that femur.

In a report dated March 3, 2000, the second opinion physician, Dr. Lawrence F. Geuss, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed a magnetic resonance imaging (MRI) scan and x-rays. He stated:

"It is felt that at the time of the accident [in April 1992] [appellant] irritated her patellofemoral joint. This would have been a temporary aggravation of her previously existing condition of degenerative changes in the knee and patellofemoral joint arthritis that was preexisting. It would be expected that this would have gotten better over a few months. It is not felt that a limited[-]duty schedule would cause progressive deterioration of her knees. [Appellant] presently gives a history of working 30 hours a week on limited duty which gives her some flexibility in standing, sitting and walking with no prolonged kneeling or squatting. I would expect that she would be able to do 40 hours a week of this same limited duty. Due to her preexisting degenerative joint disease in her knees she will not be able to be letter carrier."

Dr. Geuss stated that the objective findings of degenerative joint disease in both knees predated her April 23, 1992 injury and necessitated her remaining on light-duty status. He stated that further treatment was not required.

By letter dated March 28, 2000, the Office informed Dr. Geuss that it had accepted appellant's occupational claim which she filed for a work-related injury in August 1993, No. 01-0313292, for aggravation of degenerative joint disease of both knees. The Office asked Dr. Geuss to clarify whether the aggravation of appellant's degenerative joint disease was temporary or permanent.

In a supplemental report dated April 3, 2000, Dr. Geuss stated that appellant "never noted the work injury of August 4, 1993." He stated that the accident was not noted in Dr. William Fishbaugh, a family practitioner's, February 19, 1997 report and in Dr. James Hewson's March 20, 1996 report. Dr. Geuss, therefore, concluded that "whatever injury occurred on August 4, 1993 it was of little significance to [appellant] and had no significant effect on her knees." He stated that in his practice his patients "and in general patients that [he had] encountered over the years, will remember significant injuries." Dr. Geuss could "only state that the injury from August 4, 1993 would be placed in a temporary aggravation category."

In a report dated April 3, 2000, appellant's treating physician, Dr. Fishbaugh, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He stated that appellant's x-rays revealed degenerative changes in the knee joint which were preexisting but "one has to take into consideration that this patient was a letter carrier prior to this accident and having no problems with her knees going up and down stairs, etc." Dr. Fishbaugh stated that appellant was permanently totally disabled from a regular job as a letter carrier. He stated that his conclusions remained the same in that she required modified work with no squatting, kneeling, climbing and lifting exceeding 10 pounds. Dr. Fishbaugh also opined that appellant could work up to 40 hours a week. He stated that, since the April 23, 1992 injury, "there is a probability that the degenerative arthritis in her knees, especially in the patellofemoral joint, has progressed. In some of these reports, there is a question of loose bodies. Certainly there is a probability that these loose bodies were caused by her motor vehicle accident."

On July 5, 2000 the Office issued appellant a notice of proposed termination of compensation stating that Dr. Geuss' opinion constituted the weight of the evidence.

In a report dated July 19, 2000, Dr. Fishbaugh stated that appellant had patellofemoral stress syndrome from a work-related injury and had been on permanent restrictions at work doing six hours a day. He stated that they tried to get her up to eight hours in the past but it aggravated her knees and caused her to miss time. Dr. Fishbaugh performed a physical examination and opined that appellant should continue to work six hours a day.

By decision dated October 24, 2000, the Office terminated appellant's compensation benefits effective November 5, 2000 stating that the weight of the medical evidence as represented by Dr. Geuss' opinion established that there was no evidence of work-related residuals.

By letter dated November 14, 2000, appellant requested an oral hearing before an Office hearing representative, which was held on April 24, 2001. Her representative described appellant's work history since the April 23, 1992 employment injury and noted that, since approximately December 26, 2000, she was out on maternity leave. Appellant testified that her

doctor wanted to do surgery on her knee, clean out her knee as best as he could and try to hold off the knee replacement but it would probably be necessary at some point in time.

Appellant submitted medical reports from Dr. George P. Whitelaw, a Board-certified orthopedic surgeon, dated July 20 and November 9, 2000 and April 5 and May 10, 2001. In his July 20, 2000 report, Dr. Whitelaw considered appellant's history of injury, performed a physical examination and reviewed x-rays and a magnetic resonance imaging (MRI) scan. He stated that the x-rays and MRI scan showed that appellant had some loose bodies in the right knee and an old osteochondral fracture of the alteral femoral condyle. Dr. Whitelaw concluded that, since appellant was asymptomatic prior to April 1992, her current problems were related to the April 1992 accident. He stated that appellant "very well could have had some degenerative arthritis prior to this time that was asymptomatic, but there was no doubt that injury did exacerbate this problem and caused an osteochondral fracture with the loose bodies." Dr. Whitelaw recommended that appellant continue on modified duty until her pregnancy was completed and then have arthroscopy on her knee to remove the loose bodies as best as possible. He noted that in Dr. Geuss' April 3, 2000 report, Dr. Geuss noted that appellant did not have an injury on August 4, 1993.

In his November 9, 2000 report, Dr. Whitelaw stated that appellant continued to work six hours a day and continued to have pain in both her knees and was about one and a half months from the end of her pregnancy. He stated that he discussed with appellant that they would wait until her pregnancy was over and then consider arthroscopy to examine her knee and remove some of the loose bodies.

An x-ray dated April 5, 2001 indicated that appellant had moderate degenerative changes of the patellofemoral joints bilaterally.

In his April 5, 2001 report, Dr. Whitelaw stated that, since the April 1992 employment injury, appellant had loose bodies and that x-rays he obtained that day showed some arthritis and loose bodies. He opined that at some point appellant would need to have arthroscopy and require a knee replacement.

In his May 10, 2001 report, Dr. Whitelaw stated that he did not understand the confusion in appellant's case and reiterated that appellant had an injury in 1992 and had some loose bodies and degenerative arthritis secondary to the injury and that she should have arthroscopic surgery to remove the loose bodies and to try to give "some longevity" to the knee. He stated that probably sometime in the future appellant would need to have a total knee replacement.

By decision dated June 15, 2001, the Office hearing representative affirmed the Office's October 24, 2000 decision.

By letter dated August 1, 2002, appellant requested reconsideration of the Office's decision. In her request, appellant contended that Dr. Geuss' report was defective because he disregarded the Office's acceptance of right fracture, distal end of femur and that he erroneously stated that the August 4, 1993 injury did not occur even though the Office accepted an occupational disease claim for internal derangement of the knee with an August 4, 1993 date of injury, No. 01-0313292. Appellant noted that Dr. Whitelaw stated that prior to the April 1992

employment injury appellant worked without any problem and after the injury, x-rays and an MRI scan showed that she had an osteochondral fracture of the lateral femoral condyle causing loose bodies in the knee. Appellant stated that, unlike Dr. Geuss, Dr. Whitelaw's findings are based upon the accepted facts of the case and stated that the Office had already accepted that appellant sustained a fracture resulting in loose bodies in the knee.

By decision dated August 1, 2002, the Office denied appellant's request for modification.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation benefits effective November 5, 2000.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In the present case, in his April 3, 2000 report, appellant's treating physician, Dr. Fishbaugh, opined that appellant was permanently totally disabled from her regular job as a letter carrier, that the degenerative arthritis in her knees had probably progressed, and the loose bodies in her knee were probably caused by the motor vehicle accident. In his July 19, 2000 report, he stated that appellant had patellofemoral stress syndrome from a work-related injury. In his July 20, 2000 report, Dr. Whitelaw opined that, while appellant could well have had degenerative arthritis prior to the April 1992 employment injury, the injury exacerbated the problem and caused an osteochondral fracture with loose bodies. In his May 10, 2001 report, Dr. Whitelaw reiterated that appellant had an injury in 1992, with loose bodies and degenerative arthritis secondary to the injury which required surgery. In his March 3 and April 3, 2000 reports, the referral physician, Dr. Geuss, opined that the April 23, 1992 employment injury only temporarily aggravated appellant's preexisting degenerative joint disease and appellant would have been expected to recover in a few months. He stated that appellant was disabled due to the preexisting degenerative joint disease. A conflict exists in the medical evidence between the opinions of Drs. Fishbaugh and Whitelaw who opined that the April 23, 1992 employment injury aggravated appellant's preexisting degenerative arthritis and caused an osteochondral fracture with loose bodies and Dr. Geuss' opinion that the April 1992 employment injury only temporarily aggravated appellant's preexisting degenerative arthritis. Since the conflict in the evidence is unresolved, the Office failed to meet its burden of proof in terminating appellant's compensation benefits.

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The June 15, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
June 27, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member